

C.R.P.(MD)No.147 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Dated : 10.01.2025

CORAM:

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.147 of 2023
and
C.M.P.(MD)No.12197 of 2024

J.Mohan Prakash
represented by his power agent M.Jayaram

... Petitioner/
Petitioner/
Petitioner

Vs.

M.Vinothini

... Respondent/
Respondent/
Respondent

Prayer : The Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 14.12.2022 passed by the learned Family Court, Theni in I.A.No.1 of 2022 in H.M.O.P.No.- of 2022 and proceed the same on merits for adjudication and to pass appropriate orders.

For Petitioner : Mr.T.Lajapathi Roy, Senior Counsel
for Mr.S.Rajasekar

For Respondent : Mr.M.Saravanan
for Mr.J.Selvam



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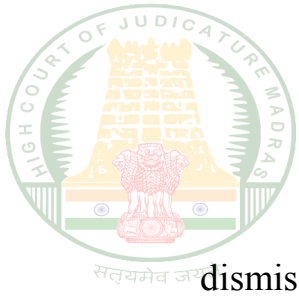
ORDER

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This Civil Revision Petition has been filed to set aside the order dated 14.12.2022 passed by the Family Court, Theni in I.A.No.1 of 2022 in H.M.O.P.No.- of 2022 and proceed the same on merits for adjudication.

2. The facts in brief is that the petition in H.M.O.P.No.139 of 2016 was filed by the revision petitioner/husband against the respondent/wife seeking the decree of divorce on so many grounds before the Subordinate Court, Theni. The respondent appeared and filed the counter affidavit. Later due to the absence of the revision petitioner, the said petition came to be dismissed for default by order dated 23.04.2019.

3. To set aside the dismissal order and to restore the main petition on its file, the revision petitioner filed I.A.No.1 of 2022 to condone the delay of 553 days in filing restore petition under Section 5 of the Limitation Act on the ground that the revision petitioner was working in Netherland so he was appearing through his father, namely, Jayaram as power agent but the power agent was suffering from Jaundice and so he could not appear before the trial Court on the date of enquiry and because of that, it was



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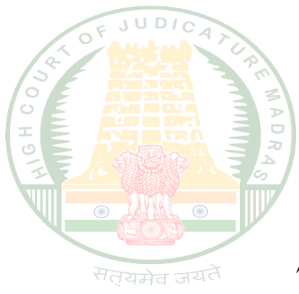
dismissed for default.

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4. That was resisted by the respondent by filing counter. The trial Court did not agree with the reason stated by the revision petitioner and dismissed the petition by order dated 14.12.2022. Against which this Civil Revision Petition is preferred.

5. At the time of hearing, an important aspect was brought to the notice of this Court by the respondent stating that the revision petitioner was working in Netherland and he has appointed his father as power agent by way of power of attorney deed but later the same came to be cancelled by the revision petitioner on 25.05.2018 and this important aspect was not brought to the notice of the Court either at the time of filing the main petition or at the time of the hearing.

6. According to the respondent, this petition itself is not maintainable since the father of the revision petitioner has no authority to file the petition.



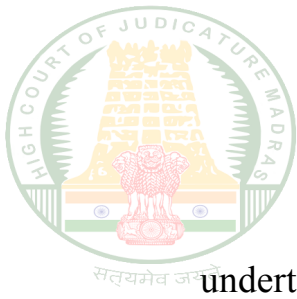
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7. To this important aspect, the learned Senior Counsel appearing for the revision petitioner would submit that since this is a matrimonial issue pending between the parties, technicalities may not be taken into account for deciding the issue and the revision petitioner is also ready to deposit Rs.10 lakhs towards the maintenance of the child and that delay may be condoned so that the main matter can be decided on its own merits.

8. It is also submitted by the learned Senior Counsel appearing for the revision petitioner that since the said power of attorney was revoked for some other reason, continuation of the proceedings by the power of attorney may not be illegal.

9. But, this Court is unable to agree with the line of arguments submitted by the learned Senior Counsel appearing for the revision petitioner. The general power of attorney was revoked by the revision petitioner. Hence, the power of attorney is not legally fit to represent the revision petitioner. If at all the revision petitioner can file the petition to set aside the dismissal order and certainly not the power of attorney. So the



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undertaking given by the revision petitioner, even though can be taken into consideration by the trial Court in future, but, due to the illegality which is not curable in nature, the petition in I.A.No.1 of 2022 itself is not maintainable. So the dismissal order passed by the trial Court on this ground requires no interference. But, at the same time, it appears that the revision petitioner wants to pursue the matter by himself. So time spent in prosecuting this matter can be deducted under Section 14 of the Limitation Act, while entertaining a fresh petition to be filed by the revision petitioner.

10. With the above said liberty, this Civil Revision Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

10.01.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
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G.ILANGO VAN,J.

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To

1. The Judge,
Family Court, Theni.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Order made in
C.R.P.(MD)No.147 of 2023
and
C.M.P.(MD)No.12197 of 2024

Dated : 10.01.2025